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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,757	06/27/2006	Paul Robert Dunwoody		7956

7590
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EXAMINER

TOLAN, EDWARD THOMAS

ART UNIT	PAPER NUMBER
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3725

MAIL DATE	DELIVERY MODE
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07/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/584,757

Applicant(s)

DUNWOODY ET AL.

Examiner

EDWARD TOLAN

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's arguments concerning the restriction requirement of the Previous Office Action are accepted. The restriction is hereby withdrawn. Applicant has stated that claims 18 and 19 are product by process claims that are not distinct from the product claims from which they depend. The claims are in fact process from product claims and therefore the Examiner will not read the process limitations into the product claims.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 12-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In claim 12, Applicant has used the terms "the diameter of the container side wall" in lines 7 and 8 and again in line 11 to define X and Y. In claim 12, line 5, Applicant sets forth "the container side wall" which has a flare, constant diameter section and taper. It is unclear in the claim as to which portion of the side wall (D1, D2 or D3) is to be used when calculating X and Y since Applicant has set forth that the side wall contains the flare, constant diameter and taper. The specification, paragraph

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[0018] sets forth "body diameter", is this the "the diameter of the container side wall" in claim 12?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12,15,18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Palisin, Jr. et al. (5,160,031). Palisin discloses a metal container having a side wall comprising a constant diameter side wall (112) defined by diameter (D'), a curled rim (114) having flares (130,132) defined by diameter (D) and a tapered portion (20a) defined by diameter D". In column 7, lines 20-39, Palisin discloses that D=24 inches (609.6mm), D'=21 inches (533.4 mm) and D"=17 inches (431.8 mm). Using a sidewall or body diameter D' of Palisin, $X=.15(533.4)=80.01$ mm and $Y=.22(533.4)=117.348$ mm. Therefore X is in the range of 6-80.01 mm and Y is in the range of 2-117.348 mm. The flaring is $D-D'=76.2$ mm which is in the range of X 6-80.01mm. The taper is $D'-D''=101.6$ mm which is in the Y range of 2-117.348 mm. Regarding claims 18 and 19, the container is formed by drawing and cutting a top.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13,14,16 and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Palisin, Jr. et al. (5,160,031). Palisin does not disclose the differences between upper and end diameters. A change in dimensions is a matter of routine experimentation and when smaller body container dimensions (as recognized in the beverage can art of between 73mm and 150mm) are used with a shape of can side wall as taught by Palisin the values of X and Y obtained yield diameter differences as claimed by Applicant. The Examiner's position is that the diameter differences claimed by Applicant naturally flow from the equation for X and Y when routine experimentation (plugging known can diameters into the X,Y equations) is followed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to Ed Tolan whose telephone number is 571-272-4525. FAX communications should be sent to 571-273-8300.

/Edward Tolan/

Primary Examiner, Art Unit 3725